



BOARD OF ETHICS
CITY OF CHICAGO

FOR IMMEDIATE RELEASE
FEBRUARY 11, 2020

On February 10, 2020, the Board of Ethics released the fourth binding advisory opinion addressing various situations frequently encountered by non-profit organizations. The opinion reflects the fundamental principle of Chicago's lobbying law – if an individual is paid by another person or organization to influence City administrative or legislative actions, that activity should be done transparently, either through official documented administrative processes or through registration and reporting of lobbying activity.

###

The Board addressed 14 different hypotheticals, determining whether the activities described therein constitute lobbying as defined under the amended Governmental Ethics Ordinance to be implemented on April 20, 2020.

◆ The Board determined that the following activities **would** constitute lobbying:

-individuals paid by a nonprofit who seek to renegotiate a contract, grant, or Memorandum of Understanding (“MOU”) that would require the execution of a revised document, if not issued by the City pursuant to a process involving competitive bidding, such as an RFP or RFQ;

-serving on a panel discussion with City employees or officials where there is a specific City policy, rule or ordinance being debated, if a paid nonprofit employee or agency urges the City personnel to adopt a particular position for or against the policy.

◆ The Board also determined that the following activities would **not** constitute lobbying:

-paid nonprofit employees who provide assistance to a City Council Caucus by supplying general information, not a position on specific legislation, although the nonprofit may be taking a position on that legislation;

-attempting to influence decisions by the City's “sister agencies,” such as the Chicago Public Schools or Chicago Park District;

-conducting “grassroots outreach in which a nonprofit's paid staff educate and encourage City residents to contact their aldermen;

-legal staff of a nonprofit who provide the City with assistance in acquiring parcels of real estate for public purposes, like a new park;

-placing a position paper on a nonprofit's website or social media sites;

-a nonprofit employee who is quoted in the media.

In order to ensure a smooth implementation of the change and careful consideration of industry-specific questions, enforcement of non-profit registration was delayed by three months to April 20, 2020. In these three months, the Board will continue to issue binding advisory opinions clarifying key concerns brought forward by the nonprofit community.

The Board will also be releasing, for public comment and formalization, draft Rules and Regulations covering lobbyist registration for individuals paid by nonprofit organizations.

This is Case 20003.A, which can be found on this page: https://www.chicago.gov/city/en/depts/ethics/supp_info/ao_-_lobbyist.html



BOARD OF ETHICS
CITY OF CHICAGO

February 10, 2020

CASE NO. 20003.A.

HYPOTHETICAL SITUATIONS—NONPROFIT LOBBYING

At its meeting today, the Board of Ethics approved the responses to the following questions posed by its legal staff as its advisory opinion in this matter. These questions are themselves based on actual questions raised to the Board and its legal staff. The Board's answers are in [red brackets].

1. A nonprofit organization holds fundraisers and other events for which it charges attendance fees. It often provides complimentary attendance to City employees and elected officials, especially if they are speaking at these events. Are costs associated with providing these complimentary admissions considered gifts? Lobbying expenditures? [They would be considered lobbying expenditures if any lobbying activity occurs during the events. If that is the case, the pro-rated cost of the events per City employee or elected official lobbied would be reported as a lobbying expenditure by the organization's registered lobbyist(s) on the next quarterly activity report. Regardless whether lobbying occurs, the City employees and elected officials who attend must receive advance approval from the Board to attend, and then report their attendance to the Board of Ethics within 10 days as "reasonable hosting," per §2-156-142(d)(12) of the Governmental Ethics Ordinance (the "Ordinance"). The Board makes all such disclosures public on its website. See <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg.html>]
2. A nonprofit organization awards scholarships for educational courses it conducts. Recipients may include City employees. Should these scholarships be reported as a gifts in any of the nonprofit's employee-lobbyist's quarterly activity report? [If no lobbying occurs at these classes, then there is no gift to report by a lobbyist. However, the City employees who attend these classes must receive advance approval to attend them from the Board of Ethics, and then must report their receipt of these scholarships as educational expenses, per §2-156-142(d)(10) of the Ordinance. The Board also makes these disclosures public on its website. See <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg.html>]
3. A nonprofit organization executes a Memorandum of Understanding ["MOU"] to conduct services for City departments, e.g. tree planting or administering vaccinations. It provides these services free of charge. However, since the nonprofit is servicing City property and assets, these City departments waive permit fees associated with conducting these services, for example, digging holes in the public way. Is the negotiation, drafting, and execution of these MOUs that include fee waivers something to be tracked and reported as lobbying activities? [Lobbying would occur only if the nonprofit is seeking a new MOU, or seeking to renegotiate the current MOU that would require the execution of a revised MOU, and the new MOU is not issued by the City pursuant to a process involving Requests for Proposals or Requests for Qualifications (RFPs or RFQs) or a process that effectively provides for competitive bidding.]
4. A nonprofit organization conducts "lobbying" activities directed to "sister" agencies governed by boards with Mayoral appointees, such as the Chicago Public Schools or Chicago Park District. Should lobbying activity directed to employees or board members of these sister agencies be reported as lobbying activity in our lobbyists' quarterly reports? [No: Chicago's Governmental Ethics Ordinance covers only lobbying before agencies and departments of the City of Chicago. The City's "sister" agencies, like the CPS and Park District are separately constituted governmental entities under Illinois state statute and are not City agencies or departments. Thus, lobbying before their personnel to affect those agencies' administrative actions does not constitute lobbying before the City. However, be aware that such activity may require

lobbyist registration with the Chicago Park District, which has its own lobbyist registration rules. For more information, see <https://www.chicagoparkdistrict.com/about-us/departments/legal/ethics-office> .]

5. A nonprofit conducts “grassroots outreach” in which it educates and encourages City residents to contact City elected officials. The nonprofit incurs costs in the form of staff time and email software to conduct this outreach. Should these expenses be reported as lobbying expenditures? [No. The Ordinance does not address or regulate “grassroots” or indirect lobbying. However, if the nonprofit’s paid staff does contact City employees or officials regarding this outreach, that would constitute lobbying if there is a specific administrative or legislative action toward which the contact is made.]
6. A nonprofit organization’s in-house legal staff represents the nonprofit in regulatory and/or permitting actions that may involve the City directly (like Illinois EPA permit renewals) or indirectly (such as water quality standards in Chicago’s waterways). Do these activities constitute lobbying? [No—there is no lobbying in this situation because these proceedings are adversarial, and there is an exemption in the Ordinance for attorneys who represent clients in formal, adversarial proceedings. However, we advise the nonprofit to check relevant State of Illinois lobbying laws and rules ascertain whether registration with the Secretary of State is required.]
7. A nonprofit’s in-house legal staff may provide the City with assistance in acquiring parcels of real estate for public purposes, such a new City park. The nonprofit does not make money from these transactions but does recover costs associated with providing the assistance. As this activity does not involve advocating for specific laws or policies, does it constitute lobbying? [No: this activity does not constitute lobbying under the Ordinance, as it falls within the exception in the revised Ordinance for “providing technical advice or assistance,” per §2-156-220(e).]
8. A City Council Caucus member or employee contacts a nonprofit employee for help in developing and providing input on the Caucus’s legislative agenda. Would this be considered lobbying that would require registering as a lobbyist in Chicago? [It would not constitute lobbying because the nonprofit employee would be providing assistance and advice with general information in response to a question from the City, and not on specific legislation, although the nonprofit employee might be taking a position.]
9. How does a nonprofit employee verify for lobbying purposes that a City official agrees with one’s position prior to discussing the City’s position on State legislation? [The only way is to ask. If the nonprofit employee doesn’t get a committal either way, then the best course is to register assuming any compensation and/or expenditure thresholds are met—and if they are already registered anyway, this particular issue would simply be one of several matters to be listed list on the quarterly activity report as another matter lobbied upon for that particular client. For example, a disclosure could state “I lobbied the Department of Family and Support Services to adopt a position on HB 12345, a bill then pending before the General Assembly.”]
10. Per Advisory Opinion 19037.A.3, #8 and 9, merely posting on Twitter media one’s nonprofit employer’s position on a proposed City Council ordinance does not constitute lobbying, and further tagging or adding an elected official in that public tweet does not constitute lobbying. However, the advisory warns that direct messaging could constitute lobbying. If the inquiry is initiated by the elected official via direct message, at what point does the activity turn into lobbying and would this qualify under the other advisory opinion that allows you to share input on an action if the official reaches out to you? [If the nonprofit employee is answering a question or request from a City elected official (or City employee, for that matter), this could turn into lobbying if: (i) the City official or employee asks the nonprofit employee what their or their employer’s position is on a particular matter; and (ii) the nonprofit employee urges the City official or employee to adopt that position. This situation is distinguishable from an alderman asking a nonprofit employee merely to explain something, or to provide background information, and the answer would be the same as if the alderman had invited the nonprofit employee to their office to speak in person instead of via direct message.]
11. In Advisory Opinion 19037.A.1, #14, the Board concludes that nonprofit employees who write policy positions and then distribute to elected officials with the intent of influencing a City action thereby engage in lobbying. But what if the nonprofit created the position and didn’t directly distribute its policy positions to City elected officials but instead

placed its position paper on the nonprofit social media and website? [This would not constitute lobbying because there is no contact with City governmental personnel.]

12. Advisory Opinion 19037.A.3, #8 and #9 clarify that public web posts and social media do not constitute lobbying because there is no direct communication or interaction with City officials or employees. Does this exemption extend to media appearances and being quoted in publications? And, further, what about media appearances (or educational events) that involve discussing policy where City elected officials are on the panel together with an employee from the nonprofit?

[(1) Being quoted in a publication does not constitute lobbying because there is no contact or communication with City personnel.

(2) As to media appearances or panels, it depends: we advise caution and urge the nonprofit employee to seek an advisory opinion from the Board before appearing. If the nonprofit employee would be arguing in favor of or against a particular City legislative or administration initiative, it likely would constitute lobbying. The Board addressed this in a case involving a former City elected official. See:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/SettlementAgreements/18012.IGBurns.pdf>. There, the Board determined that the former City elected official **did** engage in lobbying by, among other things, appearing on a TV debate program with two (2) then-currently sitting City elected officials and arguing his employer's position regarding a proposed ordinance then pending before the City Council.

(3) As to whether panel appearances involving City officials or employees could constitute lobbying, it depends on: (i) is there a specific ordinance or policy pending that the elected officials can directly affect being discussed by the panel?; (ii) will the nonprofit employee urge them to take a particular position, or really just discussing background information? If the answers are yes, then the nonprofit employee would be engaged in lobbying.]

RELIANCE: The Board's determinations and advice are based solely on the application of the Ordinance to the factual questions presented. This opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.


William F. Conlon, Chair